brought a representative action on behalf of the corporation against its directors for damages due to the negligent administration of corporate affairs. The plaintiff had acquired a part of his stock from the negligent directors after they had been guilty of breaches of duty. *Held*, that there could be no recovery on this stock. *Harris* v. *Rogers*, 179 N. Y. Supp. 799 (App. Div.).

By the weight of authority no stockholder can bring a representative action on behalf of the corporation if his transferor participated in the wrong, on the ground that a stockholder, like the transferee of a chose in action, stands in the shoes of his transferor. *Boldenweck* v. *Bullis*, 40 Colo. 253, 90 Pac. 634. See also *Babcock* v. *Farwell*, 245 Ill. 14, 41, 91 N. E. 683, 692. *Contra*, *Parsons* v. *Joseph*, 92 Ala. 403, 8 So. 788. This view overlooks the fact that in a representative action a stockholder acts in behalf of the corporation, and fails to perceive that the guilt of a stockholder should be only a personal bar against his participation in the fruits of the action. See *Babcock* v. *Farwell*, *supra*. The majority view is also due in part to the interpretation of Equity Rule 94 of the Supreme Court — which allows a stockholder to bring a representative action only if he owned stock at the time of the wrong, or acquired it subsequently by operation of law — as the statement of a substantive equity principle. See *Home Fire Ins. Co.* v. *Barber*, 67 Neb. 644, 656–662, 93 N. W. 1024, 1029–1031. But this rule is merely procedural, to prevent frauds on the jurisdiction of the federal courts. See *Quincy* v. *Steel*, 120 U. S. 241, 245, 248; *Venner* v. *Great Northern Ry.*, 209 U. S. 24, 34. It is submitted that the majority view is further objectionable in that it impairs the marketability of stock in general. See WARREN, CASES ON CORPORATIONS, 886, note.

CRIMINAL LAW — TRIAL — REVERSIBLE ERROR TO INSTRUCT JURY CONCERNING A DEGREE OF HOMICIDE LESS THAN THAT SHOWN BY THE EVIDENCE. — The evidence in a murder trial indicated clearly that the killing was accomplished by lying in wait, and that it was done maliciously, deliberately and with premeditation. Over the objection of the defendant, the court instructed the jury as to both first and second degree murder. The jury found the accused guilty of the lower grade. *Held*, that a new trial be granted. *Dickens* v. *People*, 186 Pac. 277 (Colo.).

It is well established that it is not error for a court to confine its charge to first degree murder, when all the evidence indicates either that grade of the offense or innocence. *Jarvis* v. *State*, 70 Ark. 613, 67 S. W. 76; *People* v. *Repke*, 103 Mich. 459, 61 N. W. 861; *State* v. *Cox*, 110 N. C. 503, 14 S. E. 688. The present case goes a step further, and holds that it is erroneous for a trial court, in such a case, to charge on anything but first degree murder, a view supported by the weight of authority. *State* v. *Stoeckli*, 71 Mo. 559; *Dresback* v. *State*, 38 Oh. St. 365. The error consists in the fact that jurors who have a reasonable doubt of the accused's guilt, and who should accordingly vote for an acquittal, may conceivably compromise with that doubt by finding the accused guilty of a lower degree of homicide. See *State* v. *Mahly*, 68 Mo. 315. Confining instructions to first-degree murder will often be of practical benefit to a defendant, for he thereby obtains the advantage of any aversion which jurors may have to the weighty punishment accompanying conviction. See *State* v. *Martin*, 92 N. J. L. 436, 447, 106 Atl. 385, 389. It is to be noted that reversals should be restricted to those cases where the defendant objected and excepted at the trial, and where it is very clear that a charge on a lower grade of homicide was inapplicable.

DIVORCE — ALIMONY — WHETHER CONTEMPT IN FAILING TO PAY IS PUNISHABLE BY DISMISSING COMPLAINT. — The plaintiff had brought an action for divorce against his wife. Upon his failure to pay alimony and counsel fees awarded to her, she moved to strike out his complaint. *Held*, that the motion be denied. *Naveja* v. *Naveja*, 179 N. Y. Supp. 881.

A refusal to pay alimony is a contempt of court, and may be punished by commitment. *Fowler* v. *Fowler*, 161 Pac. (Okla.) 227. See 30 HARV. L. REV. 518. But as imprisonment is frequently inadvisable, the court often resorts to punishment by denying, in the particular cause, the further use of its process to the delinquent until he has purged his contempt. *Winter* v. *Superior Court*, 70 Cal. 295; *Casteel* v. *Casteel*, 38 Ark. 477; *Reed* v. *Reed*, 70 Neb. 779, 98 N. W. 73. In New York, when the defendant was in contempt, the practice was formerly to strike out his answer and proceed to trial upon the facts alleged by the complainant. *Walker* v. *Walker*, 82 N. Y. 260; *Delvin* v. *Hinman*, 161 N. Y. 115, 55 N. E. 386. But the United States Supreme Court held that this was a violation of the Fourteenth Amendment, since it gave the defendant no opportunity to be heard in his own defense. *Hovey* v. *Elliott*, 167 U. S. 409. And it is especially bad in divorce cases, where the policy of the law requires that no divorce shall be granted except upon the merits. *Trough* v. *Trough*, 59 W. Va. 464, 53 S. E. 630. See 2 BISHOP, MAR. DIV., & SEP., § 1095. But the Supreme Court indicated that it confined its decision to a situation where the punishment was a denial of a defense. See *Hovey* v. *Elliott*, *supra*, 444. While the decision of the principal case may be supported upon the ground that it is discretionary with the court whether it will punish for contempt, its observation that it is no longer permissible to strike out the plaintiff's complaint may well be questioned. See *Reed* v. *Reed*, *supra*, 784.

EMINENT DOMAIN — COMPENSATION — SET-OFF OF BENEFITS CONFERRED ON LAND REMAINING TO OWNER. — In an action to condemn a right of way for a railroad, the court excluded evidence offered by the railway company to show that the land remaining to the owners had increased in value through the building of a depot, stockyards, elevator, and side tracks. No evidence was offered to show that by the construction of the road or its improvements any physical benefits to the land ensued. *Held*, that there was no error. *Gallatin Valley Electric Ry.* v. *Neible*, 186 Pac. 689 (Mont.).

The courts of the various states have declared several diverse views as to what benefits, if any, may be set off in condemnation proceedings against the damage done to the landowner. See 2 LEWIS, EMINENT DOMAIN, 3 ed., § 687. It is commonly said, however, that general benefits, enjoyed in common with the rest of the community, cannot be set off. *Lanier* v. *Greenville*, 174 N. C. 311, 93 S. E. 850; *Minneapolis Traction Co.* v. *Harkins*, 108 Minn. 478, 122 N. W. 450. But deduction of special benefits is usually permitted. *Bauman* v. *Ross*, 167 U. S. 548; *Ripkey* v. *Binns*, 264 Mo. 505, 175 S. W. 206; *In re Boyes*, 98 Neb. 671, 154 N. W. 231. Whether, in a particular case, benefits to the landowner are general or special, is a question of fact for the jury. *Colorado Cent. R. Co.* v. *Humphreys*, 16 Colo. 34, 26 Pac. 165; *Kirby* v. *Panhandle Ry. Co.*, 39 Tex. Civ. App. 252, 88 S. W. 281. The location of a depot near the property has been held insufficient evidence of special benefit to go to the jury. *Washburn* v. *Milwaukee R. Co.*, 59 Wis. 364, 18 N. W. 328; *Illinois, etc. Ry. Co.* v. *Borms*, 219 Ill. 179, 76 N. E. 149. *Contra*, *Peabody* v. *Boston Elevated Ry. Co.*, 191 Mass. 513, 78 N. E. 392. The same is true of increased transportation facilities. *Portland Co.* v. *Ladd Co.*, 79 Ore. 517, 155 Pac. 1192; *In re Mantorville Ry. Co.*, 101 Minn. 488, 112 N. W. 1033. *Contra*, *Colorado Cent. R. Co.* v. *Humphreys*, *supra*. The application of the rule to particular facts is aided by regarding the reason for making the distinction. "Just compensation" requires that benefits to the owner caused by the taking and use should be considered as well as the damage done thereby. See *Bauman* v. *Ross*, *supra*. 574. But it would be unjust to charge him with general benefits, for they are often speculative and conjectural, and it would be making him pay for benefits which are enjoyed by the rest of the community without any payment. See 3 SEDGWICK, DAMAGES, 9 ed., § 1129.